

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

Pamela Drain, individually and as mother and)	
Guardian of R.D., a minor under the age of fourteen,)	
)	
Plaintiff,)	
)	NOTICE OF REMOVAL
v.)	Civil Action No. <u>5:18-cv-03267-MGL</u>
)	(State Court # 2016-CP-38-01131)
Orangeburg Consolidated School District Four and)	
South Carolina Department of Education,)	
)	
Defendants.)	
_____)	

Pursuant to 28 United States Code §1441(a), §1446, and §1331, defendant South Carolina Department of Education (SCDE) hereby invokes the jurisdiction of the United States District Court for the District of South Carolina, and state the following grounds for removal:

1. The above-captioned action was brought in the Court of Common Pleas for Orangeburg County by plaintiff. Initially, the case involved an assault and battery of a school district employee of a special needs child on a school bus owned by the SCDE. On November 9, 2018, on motion by the plaintiff, the Court of Common Pleas, Edgar W. Dickson presiding, issued its Order authorizing the amendment by Plaintiff of her Complaint in a number of particulars. Among the amendments, Plaintiff added, for the first time in this case, a claim that “Defendants have also violated law by not providing R.D. a complete IEP.” *Attachment 3, State Court Filings Vol. 1, item 26, Amended Complaint, Allegation 40*. In so doing, Plaintiff alleges a violation of federal law in the form of the Individuals with *Disabilities Education Act (IDEA)*, 20 USCA §1400, *et seq.*, as the requirement of, or entitlement to, an IEP is governed by IDEA, specifically 20

USCA §1414(d). The Amended Complaint, deemed filed November 9, 2018, was electronically served on counsel on the same date. This removal notice is filed within thirty days of the date of service on the first defendant.

2. This action presents a claim and issue of federal law, in that the plaintiff alleges a violation of IDEA. The total amount in controversy is unstated in the Complaint, which seeks monetary relief.

3. The date on which the first defendant was served with the Amended Complaint in this action, which first stated a question of federal law, was no earlier than November 9, 2018.

4. This notice is filed with this Court within thirty (30) days of receipt by the first- served defendant of a copy of the Amended Complaint which triggered the removal. This defendant has not yet responded to the Amended Complaint, but is required to do so by Monday, December 10, 2018.

5. Based on the allegations of the Amended Complaint, the plaintiff is an individual citizen of South Carolina.

6. The defendants are Orangeburg Consolidated School District Four, a school district and governmental entity within the County of Orangeburg, and the South Carolina Department of Education, an agency of the State of South Carolina.

7. This Court has original jurisdiction of this action based upon the federal question presented by Plaintiff in the Amended Complaint.

8. Venue is properly in the Orangeburg Division, as the case was initially filed in Orangeburg County, and Orangeburg County is the location of the alleged activities which are the subject of the Amended Complaint.

9. Defendant submits this Notice of Removal without waiving any defenses to the claims asserted by Plaintiff and without conceding that the plaintiff has stated a claim upon which relief may be granted.

10. The attorney of record for this defendant signs this Notice of Removal pursuant to Rule 11, FRCP.

11. Counsel for the defendant Orangeburg Consolidated School District Four have communicated to the undersigned their consent to the removal, without waiving any defenses to Plaintiff's claims and without conceding that the plaintiff has stated a claim upon which relief may be granted.

WHEREFORE, defendant SCDE prays this Court accept this Notice of Removal which is being filed, and that this Court take jurisdiction of the above-captioned action, and that all further proceedings in this action in the Court of Common Pleas for Orangeburg County, State of South Carolina, bearing Civil Action Number 2016-CP-38-

01131, be stayed.

Respectfully submitted,

December 4, 2018
Bamberg, SC

NESS & JETT, LLC

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WE SO CONSENT:

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DISTRICT FOUR